



Ref: A03489

MR WHITMORE

MINISTRY OF DEFENCE LEAK

I have seen the Attorney General's letter of 6 November to the Prime Minister.

2. My understanding is that the investigation has narrowed the field of suspicion pretty conclusively to one Section of the Ministry of Defence, and in fact to one or two Civil Servants in that Section. A confession is thought to be not impossible. If therefore the possibility of prosecution is to be kept open, the investigation should be put in the hands of the police. The Attorney General is so arranging, and I do not think that the Prime Minister ~~should accept~~ ^{need object}.

3. That the investigation has gone so far is a credit to those who have undertaken it, and in particular (if I may be allowed to crow ever so slightly) to the former member of the Security Service now on the staff of the Cabinet Office who has been mainly responsible for it.

4. The decision whether to prosecute is of course for the Attorney General, and not for Ministers; but the Attorney General has the duty to consider the public interest and the right to seek the views of Ministers on the public interest in the matter, before taking his decision. I think that the Prime Minister should have a meeting with him, and with the Secretaries of State for the Home Department and Defence on this.

5. The Attorney General is clearly envisaging the possibility of a prosecution under Section 2 of the Official Secrets Act 1911. An offence under that Section has no doubt been committed. But successive Law Officers in recent years have worked, and have been known to be working, to a convention that they would not authorise prosecutions on charges which would not be an offence under the Franks proposals (or successive Government variants of them). This particular leak would probably not be an offence under revised legislation;



and, although it was undoubtedly flagrant, and very embarrassing to the Government, it would not be easy to sustain in Court an argument that national security had been prejudiced by it. If there is a prosecution under the Official Secrets Act, we shall hear a good deal from the media on this aspect of the matter, and the defendant will be built up as something of a martyr and hero in the cause of "open government" and freedom of information.

6. It may be that the leak was so flagrant that the civil servant concerned should be subject to the full vigour of the law as an example to others, notwithstanding the disadvantages of that. But consideration should at least be given to the alternative. I think that these are -

1. a criminal prosecution for theft;
2. civil proceedings for breach of confidence;
3. no proceedings at law, but disciplinary proceedings leading to dismissal.

7. I doubt whether there is evidence to make a charge for theft - though I suppose there might be in the event of a confession.

8. I do not know enough about the law to know whether civil proceedings for breach of confidence is an acceptable course; but I think that that is what a private employer would envisage.

9. The third course - disciplinary proceedings leading to dismissal - has its attractions: it makes an example of this leaker, without landing the Government in the potential embarrassment of proceedings under the Official Secrets Act. But it depends on there being either a confession or an absolutely cast-iron case against an individual: suspicion is not enough.

6 November 1980

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R. Armstrong
ROBERT ARMSTRONG

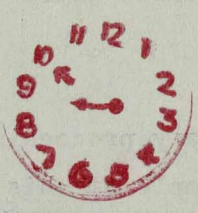
*(drafted by Sr. R. Armstrong
and signed on his behalf)*



and, as it was intended to be a permanent institution, it was necessary to provide for its continuation in the event of a change of government. It was also necessary to provide for its continuation in the event of a change of government. It was also necessary to provide for its continuation in the event of a change of government.

The first of these is the fact that the law is a permanent institution. It is not a temporary measure. It is not a measure of expediency. It is a measure of principle. It is a measure of justice. It is a measure of equity. It is a measure of fairness. It is a measure of honesty. It is a measure of integrity. It is a measure of honor. It is a measure of respect. It is a measure of dignity. It is a measure of pride. It is a measure of glory. It is a measure of honor. It is a measure of respect. It is a measure of dignity. It is a measure of pride. It is a measure of glory.

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